

NE-1060-US/KWG (00770048AA)

PATENT APPLICATION

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REMARKS

Claims 1 - 7 remain active in this application. The response filed March 16, 2004, is hereby fully incorporated in this supplemental response. No new matter has been introduced into the application.

In the response filed March 16, 2004, in response to the final office action of February 2, 2004, amendments to the drawings and the claims were proposed to add a claim recitation of a main controller 20, clearly disclosed on page 5, lines 21 and 22 but not originally illustrated. Such a main controller was clearly indicated to be known in the prior art as pointed out in the response filed March 16, 2004, that the main controller 20 is known in the art and is taught in the references applied by the Examiner. The reason for making such an amendment was to preclude the Examiner from persisting in reading recitations of controller 16 (recited as being included within a mode selector connected to a switch and having the function of "energizing" the first or second circuit; an arrangement and function inappropriate to a main controller, in any case) on such a main controller. It was also pointed out that controller 16 is clearly disclosed to be distinct from main controller 20 which handles the call management functions of the portable communication device and the use of a separate controller for controlling alternative call annunciators removes that function from the large call processing overhead of main controller 20. This argument was also made on page 15 of the response filed November 5, 2003. The response filed March 16, 2004, also pointed out that the finality of the action of February 2, 2004, was premature and should be withdrawn since the propriety of the rejection had not been *prima facie* demonstrated therein or, for that matter, in the previous office action of November 5, 2004.

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The Advisory action mailed April 2, 2004, indicated that the proposed amendment would not be entered since it raised new issues and that it presented an increased number of claims. The Advisory action contained no response to the argument that the finality of the action was premature and that the proposed amendments should be entered as a matter of right. These deficiencies of the Advisory action were discussed by telephone with the Examiner who has corrected the erroneous assertion that the number of claims had been increased by a further Advisory action mailed April 21, 2004. However, the finality of the action of February 2, 2004, has been maintained.

It is respectfully submitted that the addition of recitations of subject matter admitted to be prior art in order to preclude an erroneous claim construction contrary to the specification and which had previously been argued in the response of November 5, 2003, cannot raise a new issue. Rather, the amendment is directed to obtaining the substantive consideration, based on a correct understanding of the invention by the Examiner of subject matter abundantly clear from the specification and (as pointed out above) the claims as originally filed, to which Applicant has been entitled during the entire prosecution of this application but which has not been accorded. By the same token, by denying entry of the proposed amendment, the Examiner effectively persists in the error after evidently recognizing it (by asserting that a new issue has been raised) while effectively requiring a Request for Continued Examination and a fee equal to the original filing fee in order to have the Examiner provide the substantive examination which should have been provided during the entire prosecution of the present application.

Accordingly, it is respectfully submitted that the claims are clearly patentable over the applied prior

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art whether or not the amendment filed March 16, 2004, is entered, particularly since the Examiner has not properly considered the recitations of the association of the controller with the mode selector or the "energization" function thereof which is inappropriate to and distinguishing from the function of a main controller in a portable communication device. Further, to the extent the Examiner considers it necessary to clarify controller 16 being distinct from controller 20, the Examiner should withdraw the finality of the action of February 2, 2004, to permit the proposed amendments to be made as a matter of right. Therefore, reconsideration of the withdrawal of finality of the action of February 2, 2004, and the rejections contained therein is respectfully requested.

Since all rejections, objections and requirements contained in the outstanding official action have been fully answered, it is respectfully submitted that reconsideration is now in order under the provisions of 37 C.F.R. §1.111(b). Upon reconsideration, it is also respectfully submitted that this application is in condition for allowance.

If an extension of time is required for this response to be considered as being timely filed, a conditional petition is hereby made for such extension of time. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-2041.

Respectfully submitted,



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